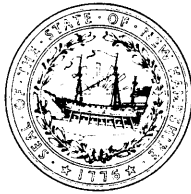


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MAY 20 1988

March 18, 1988

Mr. Peter W. Trufant
Hearing Officer
New Hampshire Department of Labor
19 Pillsbury Street
Concord, NH 03301

Re: 281:2, VII - Special Police Officers

Dear Mr. Trufant:

By letter dated February 4, 1988 you have requested the Attorney General's assistance in interpreting RSA 381:2, VII as it applies to determine the compensation rate of a part-time "special" police officer.

Your letter states that the facts of this case are not in dispute. The claimant was appointed as a "part-time police officer" by the police chief and town selectmen in 1985. Since that time the claimant has worked an irregular schedule. On April 18, 1987 the claimant made a "routine" vehicle stop while on duty and was badly beaten.

Under the workers' compensation statute compensation benefits are determined by reference to a claimant's average weekly wage. See, e.g., RSA 281:23 (compensation for total disability); RSA 281:25 (compensation for temporary partial disability). There are two reference points for computing a claimant's average weekly wage. The average weekly wage for most claimants is established by taking the claimant's mean weekly wage for the twelve weeks preceding the injury. RSA 281:2, VII (1) (1987). Where the rate will be more favorable if a longer period is used to determine the mean weekly wage, then a longer period, up to one year, may be used. Id.



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A special class of claimants receives compensation by reference not to their actual wages but by reference to a constructive average weekly wage. This rate is computed by reference to the mean of all weekly wages earned in the state. RSA 281:2, VII (2) (1987). This preferential rate is extended by the existing statute to "call firemen or special police officers, volunteer or auxiliary members of a fire or police department, ambulance or rescue service of the state or any of its political subdivisions," among others. RSA 281:2, VII (2) (A) (1987) (emphasis added); see also RSA 281:2, VII (2) (B) (1987) (special compensation rate for forest fire fighters and for search and rescue personnel); RSA 281:2, VII (3) (1987) (special compensation rate for members of the general court).

The claimant asserts in this case that he is entitled to the extraordinary compensation benefits of subdivision (2) of RSA 281:2, VII because he is a "special police officer." For the reasons that follow, I have concluded that the claimant meets the definition of special police officer.

DISCUSSION

Prior to 1985 part time police officers were not entitled to preferential compensation benefits. New Hampshire Mun. Workers Comp. Fund v. Smith, 124 N.H. 526 (1984). In the Smith case a regularly employed part-time police officer argued that he was entitled to enhanced benefits because he was an "auxiliary member" of a police force.

The Smith court rejected this argument for two principal reasons. First, auxiliary officers were held not to be regularly employed and were held to be employed to serve in emergencies and other times of need. Id. at 530-31. Second, the award of extraordinary benefits to "part-time special" police officers would put full-time special officers at a disadvantage, and the court did not believe that the legislature intended such a result to occur under then-existing statutes. It thus held that "auxiliary members" of police forces were those who served on an irregular, emergency basis.

The Smith court noted that "special" police officers are those who are not elected under the provisions of RSA 41:47 but rather have been appointed to continue in office during the pleasure of the selectmen under RSA 105:1. Id. at 531; see also RSA 37:6, II; RSA 37:6, VII. The court also observed that

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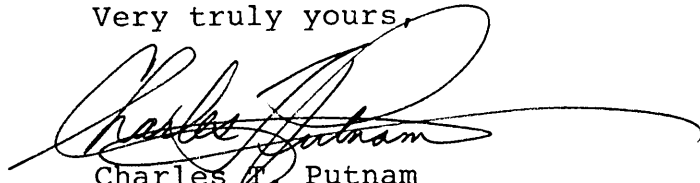
special police officers may be appointed either for a temporary or specific purpose or for permanent and full-time duty and that the great majority of police officers in this state are technically and legally special officers. Id.

On June 24, 1985, Chapter 386 of the Public Laws of 1985 became effective. That law amended RSA 281:2, VII to provide that "special police officers" would be entitled to the extraordinary compensation benefits established under that section.

In this case the parties agree that the claimant was appointed by the police chief and town selectmen. The claimant thus falls within the definition of "special police" officer and is entitled to the extraordinary compensation provided for in RSA 281:2, VII (2).

Thank you for your inquiry. Please contact me if I can be of further assistance on this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Charles T. Putnam', with a long, sweeping horizontal line extending to the right.

Charles T. Putnam
Assistant Attorney General

CTP/der

88-006